



1       Appearances:

2               On behalf of the United States of America:

3                       ELIZABETH M. YUSI, ASSISTANT UNITED

4                       STATES ATTORNEY

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12                      Criminal Division, Child Exploitation &

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18               On behalf of the Defendant:

19                      RODOLFO CEJAS, II, ASSISTANT FEDERAL

20                      PUBLIC DEFENDER

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1 (The record commenced at 9:50 a.m.)

2 THE COURT: Ms. Fisher, Ms. Yusi, is the  
3 government ready to proceed?

4 MS. YUSI: We are. Good morning, Your Honor.

5 THE COURT: Mr. Cejas, is your client ready to  
6 proceed?

7 MR. CEJAS: Yes, we are. Good morning, Your  
8 Honor.

9 THE COURT: Good morning, Mr. Cejas.

10 Mr. Darby, would you come forward, please, to  
11 the podium.

12 Mr. Darby, before accepting your plea of guilty  
13 in this matter I want to inform you of your rights. I want  
14 to be satisfied that you understand them and that you're  
15 entering this plea fully, freely, and voluntarily with a full  
16 understanding of what your rights are.

17 You are to be sworn to answer questions which I  
18 propose to put to you in order to be certain that you know  
19 what your rights are and that you're, indeed, guilty of the  
20 offense with which you're charged subject to particular  
21 conditions.

22 I intend to question you under oath on the  
23 record in the presence of your lawyer about the offenses to  
24 which you're pleading as well as other matters, and your  
25 answers if untrue and material to these proceedings may later

1 be used against you in a prosecution for perjury or false  
2 statement.

3 Do you understand that this Court may question  
4 you along these lines?

5 THE DEFENDANT: Yes, I do, Your Honor.

6 THE COURT: Do you further understand that the  
7 answers, if they're untrue, may be used in a prosecution for  
8 perjury or false statement?

9 THE DEFENDANT: Yes, I do, Your Honor.

10 THE COURT: Would you please swear the  
11 defendant, Mr. Darby?

12 (GERALD ANDREW DARBY was duly sworn.)

13 THE COURT: Your correct name is Gerald,  
14 G-E-R-A-L-D, Andrew Darby and you are the person named in the  
15 pending criminal indictment in the United States District  
16 Court for the Eastern District of Virginia, Norfolk Division,  
17 as Criminal Action No. 216cr36; is that correct?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And you're over the age of 21?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And how far did you go in school,  
22 Mr. Darby?

23 THE DEFENDANT: I completed some years of  
24 college.

25 THE COURT: So you're able to read, write and

1 speak the English language and you understand what I'm saying  
2 to you now?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: As you stand there are you under the  
5 influence of any drugs, narcotics, marijuana or alcohol?

6 THE DEFENDANT: No, I am not, Your Honor.

7 THE COURT: Have you ever been treated for any  
8 mental illness or addiction to narcotic drugs of any kind?

9 THE DEFENDANT: As far as -- yes, Your Honor,  
10 depression, but no to any addiction to alcohol or any other  
11 kind of drugs.

12 THE COURT: Other than that, any other treatment  
13 of any kind?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: You haven't been addicted to  
16 narcotic drugs?

17 THE DEFENDANT: No, Your Honor, I have not.

18 THE COURT: Now, you've received a copy of the  
19 indictment pending against you, that is, the written charges  
20 made against you in this case. And I want to know, have you  
21 fully discussed those charges and the case in general with  
22 your attorney, Mr. Cejas?

23 THE DEFENDANT: Yes, I have, Your Honor.

24 THE COURT: Now, you're charged with eight  
25 counts in the criminal indictment. You've agreed to plead

1 guilty to Count One. Count One charges you with receipt of  
2 images of minors engaging in sexually explicit conduct in  
3 violation of Title 18, United States Code, Section  
4 2252(A)(2).

5 In order to convict you of the offense charged  
6 in this count the government would have to prove the  
7 following essential elements of the offense beyond a  
8 reasonable doubt:

9 One, that somewhere in the Eastern District of  
10 Virginia you knowingly received one or more matters which  
11 contained visual depictions of a minor engaging in sexually  
12 explicit conduct. Such visual depiction had been shipped or  
13 transported using any means of interstate or foreign commerce  
14 or had been produced using materials which had been mailed or  
15 shipped or transported by any means, including by computer,  
16 in interstate or foreign commerce, for the production of such  
17 visual depiction involved the use of a minor engaging in  
18 sexually explicit conduct, and such visual depiction was of a  
19 minor engaging in this sexually explicit conduct. You knew  
20 that such visual depiction was of a sexually explicit conduct  
21 and that at least one of the persons engaged in the sexually  
22 explicit conduct and such visual depiction was a minor.

23 The penalty provided by law for this count is a  
24 minimum term of imprisonment of five years, a maximum term of  
25 imprisonment of 20 years, a maximum fine of \$250,000, a

1 special assessment of \$100, and an additional special  
2 assessment of \$5,000 should the Court find you to be  
3 nonindigent.

4 Full restitution is required and forfeiture of  
5 assets and, that is, the assets either committed with this  
6 crime or committing this crime, or assets that were derived  
7 from the benefits, if any, of this crime.

8 A supervised release term in a minimum of five  
9 years up to a term of life is required.

10 Do you understand what the government would have  
11 to prove and the seriousness of the penalty provided by law  
12 for this offense?

13 THE DEFENDANT: Yes, I do, Your Honor.

14 THE COURT: In relation to the sentence that  
15 this Court may impose you may have hear of Advisory  
16 Sentencing Guidelines relative to the sentence, and pursuant  
17 to the United States Supreme Court's various decisions in  
18 Title 18, United States Code Section 3553, this Court advises  
19 you that it will impose a sentence sufficient but no greater  
20 than necessary to: One, reflect the seriousness of your  
21 offense; two, to promote respect for the law; three, to  
22 provide just punishment for your offense; four, to afford  
23 adequate deterrents to criminal conduct; five, to protect the  
24 public from further crimes you may commit, and six, to  
25 provide you with needed educational or vocational training,

1 medical care, or other correctional treatment.

2 In determining the sentence to be imposed this  
3 Court will also consider the nature and circumstances of your  
4 offense, your history and characteristics, the kinds of  
5 sentences available, the need to avoid unwarranted sentencing  
6 disparities, and the need to provide restitution to any  
7 victim of your offense.

8 Additionally, the Court must take the applicable  
9 sentencing guideline range as determined by the United States  
10 Sentencing Guideline Commission under advisement. In  
11 calculating this range the Court advises you that it may take  
12 into consideration all your activities in arriving at the  
13 sentencing guideline range, including activities for which  
14 you're not charged and activities for which charges or  
15 indictments have been or will be dismissed.

16 Do you understand this?

17 THE DEFENDANT: Yes, I do, Your Honor.

18 THE COURT: In addition to any fine or prison  
19 sentence that this Court may impose you may be required to  
20 make restitution and to compensate any victim who has  
21 suffered a loss caused by any of the acts for which you're  
22 pleading guilty. Restitution is not limited only to the  
23 victim's actual loss such as monies or property stolen or  
24 damaged, if indeed there were any, and the return thereof,  
25 but include restitution for such things as medical expenses



1 and lost wages where the victim and other victims may have  
2 been injured or suffered damages.

3 Thus, any person who has suffered as a result of  
4 the acts of which you're pleading guilty today may be the  
5 subject of a restitution order, and that restitution order  
6 may be made a part of your sentence and would have the effect  
7 of a judgment against you.

8 Do you understand this, sir?

9 THE DEFENDANT: Yes, I do, Your Honor.

10 THE COURT: Now, the Court may require you to  
11 forfeit certain property to the government if it was obtained  
12 with the proceeds of this illegal activity or if it was used  
13 to commit this illegal activity.

14 Do you understand this?

15 THE DEFENDANT: Yes, I do, Your Honor.

16 THE COURT: The offense to which you're pleading  
17 is a felony. If your plea is accepted you will be judged  
18 guilty of the offense. Such judgment may deprive you of  
19 valuable Civil Rights such as the right to vote, the right to  
20 hold public office, the right to sit on a jury, the right to  
21 possess a firearm.

22 Do you understand you would lose these rights?

23 THE DEFENDANT: Yes, I do, Your Honor.

24 THE COURT: A guilty plea to this offense may  
25 also have other added consequences such as deportation if you

1 are an alien, loss of privilege, loss of jobs or positions or  
2 licenses of any kind, impairment of reputation and  
3 disqualification for public and private benefits.

4 Are you aware that these collateral matters may  
5 affect you should you plead guilty to this offense?

6 THE DEFENDANT: Yes, I do Your Honor.

7 THE COURT: Are you an alien or otherwise  
8 subject to deportation?

9 THE DEFENDANT: No, I am not, Your Honor.

10 THE COURT: Additionally, do you understand that  
11 the cost of your prosecution and the cost of your  
12 incarceration, supervision or probation, if any, may also be  
13 assessed against you should I determine you have the money  
14 and funds with which to pay the same?

15 Do you understand that, sir?

16 THE DEFENDANT: Yes, I do, Your Honor.

17 THE COURT: In addition to any fine, forfeiture,  
18 cost of prosecution, incarceration, supervision or probation  
19 you'll be required to pay a special assessment of \$100 which  
20 is to apply to court costs, and this is required whether or  
21 not you have the ability to pay.

22 Do you understand that?

23 THE DEFENDANT: Yes, I do, Your Honor.

24 THE COURT: In addition to this \$100 assessment  
25 you'll have a hundred dollar assessment, and in addition to

1       that if this Court finds you to be nonindigent you will be  
2       required to pay an additional special assessment of \$5,000.

3               Do you understand that, sir?

4               THE DEFENDANT: Yes, I do, Your Honor.

5               THE COURT: Do you understand that there may be  
6       a period of supervised release in addition to any jail  
7       sentence which may be imposed? The period of supervised  
8       release with respect to this count is a minimum of five years  
9       up to a maximum of life.

10              Your failure to abide by the conditions of  
11      supervised release may subject you to an additional period of  
12      confinement not in excess of the maximum number of years of  
13      supervised release authorized for the underlying offense and  
14      which may be given to you at the time of the sentencing.

15              Do you understand that, sir?

16              THE DEFENDANT: Yes, I do, Your Honor.

17              THE COURT: Have you read the plea agreement?

18              THE DEFENDANT: Yes, I have, Your Honor.

19              THE COURT: Has your counsel, Mr. Cejas, fully  
20      explained the plea agreement to you?

21              THE DEFENDANT: Yes, he has.

22              THE COURT: Mr. Marshall, would you be so kind  
23      as to hand to Mr. Darby this document?

24              Mr. Darby, can you tell me what that document is  
25      that the court security officer, Mr. Marshall, has just

1 handed you?

2 THE DEFENDANT: Yes. It's a copy of the plea  
3 agreement, Your Honor.

4 THE COURT: And is this a plea agreement you  
5 went over in detail with your attorney, Mr. Cejas?

6 THE DEFENDANT: Yes, it is, Your Honor.

7 THE COURT: And have you signed it and initialed  
8 all the other pages of this agreement?

9 THE DEFENDANT: Yes, I have, Your Honor.

10 THE COURT: Mr. Cejas, is this plea agreement  
11 the one that you entered into with your client, Mr. Darby,  
12 and with the United States Attorney in this case?

13 MR. CEJAS: Yes, sir.

14 THE COURT: And have you signed it and initialed  
15 all the other pages?

16 MR. CEJAS: I have.

17 THE COURT: Would you be so kind as to hand the  
18 agreement to Ms. Fisher or Ms. Yusi?

19 Who signed this agreement? Ms. Yusi, did you  
20 sign it?

21 MS. YUSI: I did, Your Honor, on behalf of the  
22 government.

23 THE COURT: And is this the agreement you  
24 entered into with Mr. Cejas and his client, Mr. Darby, in  
25 this case?

1 MS. YUSI: It is, Your Honor.

2 THE COURT: And have you executed it and  
3 initialed all the other pages?

4 MS. YUSI: I have, Your Honor.

5 THE COURT: Mr. Darby, did you enter into this  
6 agreement freely and voluntarily?

7 THE DEFENDANT: Yes, I did, Your Honor.

8 THE COURT: The agreement is hereby ordered  
9 filed subject to the acceptance of a plea of guilty as to  
10 Count One of this indictment.

11 Now, Mr. Darby, do you understand that you have  
12 an absolute right to plead not guilty?

13 You've previously entered a plea of not guilty  
14 to this charge. You would have a right to persist in that  
15 plea. If you pled not guilty even -- you can ignore the plea  
16 agreement and plead not guilty if you desire to do so, and I  
17 want to emphasize that.

18 If you pled not guilty you would have a right to  
19 a speedy and a public trial by jury. At that trial you have  
20 the right to the assistance of a lawyer, the right to  
21 confront and cross-examine the witnesses against you, and you  
22 cannot be required to incriminate yourself.

23 Do you understand this right?

24 THE DEFENDANT: Yes, I do, Your Honor.

25 THE COURT: Now, if you pled not guilty at a

1 trial you may not be required to testify, and any such  
2 failure to testify at a trial may not be commented upon nor  
3 may the Court or the jury draw any inference of any kind from  
4 any such failure to testify.

5 Do you understand this right?

6 THE DEFENDANT: Yes, I do, Your Honor.

7 THE COURT: That you have therefore a right not  
8 to incriminate yourself. Do you understand this, sir?

9 THE DEFENDANT: Yes, I do, Your Honor.

10 THE COURT: Now, if you pled guilty to Count One  
11 you waive all of those rights with respect to that count.

12 Do you understand that, sir?

13 THE DEFENDANT: Yes, I do, Your Honor.

14 THE COURT: If this Court accepts your guilty  
15 plea there will be no further trial of any kind in this  
16 matter, merely a hearing to determine the sentence which will  
17 be imposed upon you.

18 Do you understand this?

19 THE DEFENDANT: Yes, I do, Your Honor.

20 THE COURT: If you pled not guilty the United  
21 States would have the burden of convincing each and every  
22 member of a jury composed of 12 persons of your guilt by  
23 competent evidence beyond a reasonable doubt.

24 Do you understand that?

25 THE DEFENDANT: Yes, I do, Your Honor.

1 THE COURT: If you were to plead not guilty you  
2 would have the right to use the power and process of this  
3 court to compel the production of any evidence, including the  
4 attendance of any witnesses on your behalf, but if the Court  
5 accepts your guilty plea you lose that right.

6 Do you understand that, sir?

7 THE DEFENDANT: Yes, I do, Your Honor.

8 THE COURT: Now, if you persist in your desire  
9 to plead guilty to this offense, as I told you in the  
10 beginning, the Court or this Court may ask you questions  
11 about the offense. If you answer these questions under oath  
12 in the presence of your attorney, your answers if untrue and  
13 material to these proceedings may later be used against you  
14 in a prosecution for perjury or false statement if they're  
15 untrue.

16 Do you understand that this Court may question  
17 you along these lines?

18 THE DEFENDANT: Yes, I do, Your Honor.

19 THE COURT: Now, every person has a right to be  
20 free from an unreasonable search and seizure by a law  
21 enforcement agent, whether federal or state. Therefore,  
22 every person has a right to be free from an unconstitutional  
23 search and seizure of evidence, excluding the claims and  
24 arguments made in your first Motion to Suppress filed on  
25 April the 13th, 2016, and the second Motion to Suppress filed

1 on May 3rd, 2016.

2 Other than these alleged Constitutional rights  
3 do you feel that any other Constitutional rights have been  
4 violated in any way in connection with the seizure of any  
5 physical or tangible evidence relating to this offense by any  
6 police or other law enforcement agent, whether federal or  
7 state?

8 Have they violated your Constitutional rights  
9 other than your claims as set forth just now?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Excluding the claims and arguments  
12 made in your first and second Motion to Suppress do you feel  
13 that any other of your Constitutional rights have been  
14 violated in any way in regard to the taking of any oral or  
15 written statement from you by any police, governmental or law  
16 enforcement agency, or by anyone directly or indirectly  
17 having a connection with such agency or a person in such  
18 agency?

19 Did they violate your Constitutional rights?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Has anyone, including your attorney  
22 or the United States Attorney, made any promise of leniency  
23 or promise of any kind in return for a plea of guilty to this  
24 particular charge other than those promises contained in the  
25 written plea agreement which has just been filed herein, any



1 other promises?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Has anyone threatened you in any way  
4 or used force against you to induce you to plead guilty to  
5 this particular count?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Do you understand that any  
8 recommendation by the prosecution or any agreement by the  
9 prosecution not to oppose your attorney's request for  
10 sentence is not binding upon the Court? Do you understand  
11 that?

12 THE DEFENDANT: Yes, I do, Your Honor.

13 THE COURT: Have you had the opportunity to  
14 discuss your case thoroughly with your attorney, Mr. Cejas?

15 THE DEFENDANT: Yes, I have, Your Honor.

16 THE COURT: Have you discussed all of the facts  
17 in the case with your attorney, Mr. Cejas?

18 THE DEFENDANT: Yes, I have, Your Honor.

19 THE COURT: Are you satisfied that your  
20 attorney, Mr. Cejas, has fully considered all the facts and  
21 discussed with you any possible defenses that you may have to  
22 the charges against you?

23 THE DEFENDANT: Yes, I am, Your Honor.

24 THE COURT: Do you understand that should you be  
25 sentenced to prison for this crime there's no parole?

1 THE DEFENDANT: Yes, I do, Your Honor.

2 THE COURT: Now, the statute under which you're  
3 charged sets forth the maximum sentence which can be imposed.  
4 Sentencing guidelines have been established which are used in  
5 an advisory fashion to determine the actual sentence which  
6 may be imposed upon you.

7 Are you aware that these guidelines take into  
8 account the actual conduct in which you engaged, consider the  
9 victims, if any, of your offense, the role that you played in  
10 the offense, and whether or not you've engaged in any  
11 obstruction of justice or have accepted responsibility for  
12 your acts?

13 Do you understand all of this?

14 THE DEFENDANT: Yes, I do, Your Honor.

15 THE COURT: Do you understand that your criminal  
16 history or the lack thereof is an important factor in  
17 applying the advisory sentencing guideline range? Do you  
18 understand that?

19 THE DEFENDANT: Yes, I do, Your Honor.

20 THE COURT: Now, this Court has a right to  
21 depart upward or downward from the Advisory Sentencing  
22 Guidelines range. However, it can't do anything until a  
23 pre-sentence report is prepared by the probation office of  
24 this court which sets forth your personal history as well as  
25 the facts of this case.

1                   Until such a report is completed it is  
2                   impossible for either this Court or for your lawyer,  
3                   Mr. Cejas, to know precisely and exactly what sentence range  
4                   will be prescribed for Count One by the Advisory Sentencing  
5                   Guideline range.

6                   Do you understand that this?

7                   THE DEFENDANT: Yes, I do, Your Honor.

8                   THE COURT: Do you understand this Court will  
9                   follow the procedure set forth in Title 18, United States  
10                  Code Section 3553 when it determines your sentence and it can  
11                  do so only after receiving the pre-sentence report?

12                  Do you understand that?

13                  THE DEFENDANT: Yes, I do, Your Honor.

14                  THE COURT: It may be necessary to resolve  
15                  disputed facts contained in the pre-sentence report and that  
16                  the resolution of these facts may affect the application of  
17                  the Advisory Sentencing Guidelines. Do you understand this?

18                  THE DEFENDANT: Yes, I do, Your Honor.

19                  THE COURT: Have you discussed the Advisory  
20                  Sentencing Guidelines with your attorney, Mr. Cejas?

21                  THE DEFENDANT: Yes, I have, Your Honor.

22                  THE COURT: Has Mr. Cejas explained to you the  
23                  various considerations which go into determining which  
24                  advisory guideline might be applied in your case?

25                  THE DEFENDANT: Yes, he has, Your Honor.

1 THE COURT: At this point it is unlikely that  
2 Mr. Cejas can be specific as to the guideline which will  
3 apply in your case until he has seen all of the necessary  
4 information, and that is in the pre-sentence report. The  
5 pre-sentence report has been prepared in this case, however,  
6 but I want to emphasize that you will not be able to withdraw  
7 your plea of guilty should be plead guilty to Count One on  
8 the ground that your lawyer's prediction as to the advisory  
9 sentencing guideline range proved to be in error or  
10 inaccurate.

11 Do you understand that?

12 THE DEFENDANT: Yes, I do, Your Honor.

13 THE COURT: Now, you have a right to appeal in  
14 this case because you're reserving that right based on your  
15 Motions to Suppress in this case. However, the government --  
16 other than the right to appeal that particular matter, you  
17 can appeal anything else in this particular case other than  
18 that particular matter.

19 You're waiving your right to appeal your  
20 conviction. You're waiving your right to appeal any sentence  
21 imposed except you're reserving your right to appeal based on  
22 the two Motions to Suppress that you have made in this case.

23 Do you understand this?

24 THE DEFENDANT: Yes, I do, Your Honor.

25 THE COURT: On the other hand, the government

1 claims that it may appeal any sentence this Court imposes,  
2 and that's said in the plea agreement. However, since it's  
3 in the plea agreement you're aware of that. But I want to  
4 emphasize that this Court is not passing on the right of the  
5 government to appeal, even though they set it forth in the  
6 plea agreement.

7 Because the plea agreement is a contract, basic  
8 contract law indicates that any remedy must be fair and  
9 equal. This Court doesn't think it may be fair but I want to  
10 emphasize that it's in your plea agreement that you've waived  
11 that right while the government has not, subject to your  
12 Motions to Suppress.

13 Ms. Yusi, does the government consent to the  
14 condition that the defendant reserves his right to appeal  
15 based on the two Motions to Suppress that he's made in this  
16 case?

17 MS. YUSI: We do, Your Honor.

18 THE COURT: All right. Mr. Darby, apart from  
19 this condition you know you're waiving your right to appeal.  
20 Do you understand that, sir?

21 THE DEFENDANT: Yes, I do, Your Honor.

22 THE COURT: Mr. Cejas -- and you're waiving your  
23 right both to your right to appeal your conviction as well as  
24 your right to appeal any sentence, you're waiving those  
25 rights except to the extent of your Motion to Suppress.

1 Do you understand that, sir?

2 THE DEFENDANT: Yes, I do, Your Honor.

3 THE COURT: Mr. Cejas, has this defendant been  
4 competent and able to cooperate with you in this case?

5 MR. CEJAS: Yes, sir.

6 THE COURT: Have you discussed the facts of this  
7 case in detail with Mr. Darby, the defendant?

8 MR. CEJAS: I have.

9 THE COURT: Are you satisfied that there are no  
10 meritorious defenses to Count One that this defendant might  
11 raise in this case which in your opinion would result in a  
12 not guilty verdict by a jury? Are you so satisfied?

13 MR. CEJAS: Yes, sir.

14 THE COURT: Excluding the claims and arguments  
15 made in your first Motion to Suppress filed on April 13,  
16 2016, and the second Motion to Suppress filed on May 3rd,  
17 2016, are you satisfied that the defendant's Constitutional  
18 rights have been observed heretofore in this case?

19 MR. CEJAS: Yes, sir.

20 THE COURT: Are you satisfied that as the  
21 defendant, Mr. Darby, stands before the bar today that he is  
22 not under the influence of any drugs, narcotic, marijuana or  
23 alcohol? Are you so satisfied?

24 MR. CEJAS: Yes, I am.

25 THE COURT: Do you know of any reason of any

1 nature which would prevent this defendant from pleading  
2 guilty to Count One of this indictment?

3 MR. CEJAS: No, sir.

4 THE COURT: Now, Mr. Darby, I am going to read  
5 to you Count One of the indictment. I'm going to ask you how  
6 you plead. I want to emphasize regardless that you've  
7 entered into an agreement in this case, a plea agreement, you  
8 can plead not guilty if you desire to do so.

9 Do you understand that?

10 THE DEFENDANT: Yes, I do, Your Honor.

11 THE COURT: This is in the United States  
12 District Court for the Eastern District of Virginia, Norfolk  
13 Division, United States of America versus Gerald Andrew  
14 Darby, Criminal Action No. 216cr36. The indictment was  
15 handed down in the March of 2016 term at Norfolk, Virginia.

16 Count One: The grand jury charges that on or  
17 about October the 27th, 2014, in Suffolk, in the Eastern  
18 District of Virginia and elsewhere, Defendant Gerald Andrew  
19 Darby did knowingly receive a visual depiction using a means  
20 and facility of interstate and foreign commerce, and that had  
21 been shipped and transported in and affecting interstate and  
22 foreign commerce, and which contained materials which had  
23 been so shipped and transported by any means, including by  
24 computer, and the production of such visual depiction  
25 involved the use of a minor engaging in sexually explicit

1     conduct, and such visual depiction was of such conduct, that  
2     is, Gerald Andrew Darby received a visual depiction bearing  
3     the file name, quote, (John Doe)+9yr+00016.jpg.jpg, end of  
4     quote, in violation of Title 18, United States Code Sections  
5     2252(a)(2), 2256(1), and Title 18 United States Code Section  
6     2.

7             Subject to your Motions to Suppress, the two  
8     Motions to Suppress that you have made in this case, how do  
9     you plead to this Count One of the indictment?

10            THE DEFENDANT: Guilty, Your Honor.

11            THE COURT: Are you entering this plea of guilty  
12     freely and voluntarily, Mr. Darby?

13            THE DEFENDANT: Yes, I am, Your Honor.

14            THE COURT: Are you pleading guilty because you  
15     are, in fact, guilty of the offense with which you're charged  
16     subject to your pleas -- subject to your motions to -- both  
17     Motions to Suppress in this case? I'll repeat that.

18            Are you pleading guilty because you're, in fact,  
19     guilty of this offenses with which you're charged subject to  
20     the Motions to Suppress which you made in this case?

21            THE DEFENDANT: Yes, I am, Your Honor.

22            THE COURT: All right. You can have a seat,  
23     Mr. Darby.

24            Ms. Yusi, would you please recite the facts, or,  
25     Ms. Fisher, which you expect that the government would have



1 shown in this case relating to this offense to which the  
2 defendant has pled guilty? Ms. Fisher, thank you.

3 MS. FISHER: Yes, Your Honor. The Statement of  
4 Facts is as follows:

5 Subject to the appeal of defendant's first and  
6 second Motions to Suppress, the parties stipulate that the  
7 allegations in Count One of the criminal indictment and the  
8 following facts are true and correct, and that had the matter  
9 gone to trial the United States would have proven them beyond  
10 a reasonable doubt.

11 From in or about August 2014 through in and/or  
12 about March 2015 a hidden site dedicated to the sharing of  
13 images of minors engaging in sexually explicit conduct  
14 operated on an anonymous network accessible through the  
15 Internet. During the period in which it operated the site,  
16 hereinafter Website A, grew to be the largest known hidden  
17 site dedicated to the sharing of images of minors engaging in  
18 sexually explicit conduct operating on the anonymous network  
19 worldwide.

20 Website A's content was accessible only to  
21 individuals who knew of the site and its location and who  
22 created membership accounts. Website A's registration  
23 process included content about the information required to  
24 create an account, including an instruction not to use a  
25 legitimate e-mail address or to disclose any identifying

1 information, as well as other recommendations on how to hide  
2 a user's identity.

3 Website A's content was categorized in sections,  
4 forums and subforums. Within these were various topics  
5 authored by site members to which other members could reply.  
6 When accessed, the topic's original post appeared at the top  
7 of the page with any corresponding replies included below it  
8 in a thread form. These topics included text, images,  
9 thumbnail previews of images, compressed files, and links to  
10 external websites. Certain topics contained information  
11 about how to cruise the site. However, the majority  
12 contained discussions about and numerous images that appeared  
13 to depict images of minors engaging in sexually explicit  
14 conduct and child erotica involving children of various ages,  
15 including prepubescent girls, boys, and toddlers. The  
16 sections, forums and subforums containing these threads were  
17 organized by gender, age and type of sexual activity.

18 The Federal Bureau of Investigation is an agency  
19 within the Department of Justice of the United States and has  
20 jurisdiction to investigate crimes involving the sexual  
21 exploitation of children.

22 In early 2015 the FBI determined the location at  
23 which Website A was hosted.

24 On February 20, 2015, FBI agents sought and  
25 obtained lawful court authorizations from the United States

1 District Court for the Eastern District of Virginia,  
2 Alexandria Division, to: One, monitor the communications of  
3 Website A's members and, two, deploy a law enforcement  
4 technique on the site to identify registered members through  
5 their actual IP addresses and other information associated  
6 with the computers they used to access Website A.

7 On or about February 22nd, 2015, the law  
8 enforcement technique was lawfully deployed pursuant to such  
9 authorization against Website A member NeoUmbrella. Among  
10 the information obtained through the deployment of this  
11 technique were the member's true IP address, the host  
12 computer name, GLADOS, and the log-on name, Kasalari. The IP  
13 address associated with the NeoUmbrella account returned to a  
14 location in Suffolk, Virginia. That IP address belonged to  
15 Gerald Andrew Darby, hereinafter Darby, the defendant herein.

16 According to data obtained from Website A's log  
17 the NeoUmbrella membership was created on December 25th,  
18 2015. Between December 25th, 2014, and March 2, 2015,  
19 NeoUmbrella was actively logged into Website A for a total of  
20 three hours and 47 minutes. NeoUmbrella accessed topics that  
21 included links and preview images of material depicting  
22 minors engaging in sexually explicit conduct. NeoUmbrella  
23 did not create or respond to any topics, did not engage in  
24 private messaging with other members, and did not upload any  
25 content, including any images or videos, to Website A.

1                   During the period in which NeoUmbrella accessed  
2                   Website A Darby resided at his residence located in Suffolk,  
3                   Virginia.

4                   On January 4, 2016, FBI Special Agent Stacey  
5                   Sullivan obtained a federal search warrant for Darby's  
6                   residence.

7                   On January 7, 2016, agents and Task Force agents  
8                   with the FBI, along with other law enforcement agents,  
9                   conducted a search of Darby's residence pursuant to the  
10                  lawfully obtained search warrant and seized several computers  
11                  and other electronic media storage items.

12                  During the January 7th --

13                  THE COURT: Stop. Go ahead.

14                  MS. FISHER: During the January 7th, 2016  
15                  search, law enforcement agents spoke with Darby at his  
16                  residence. Darby was advised that a federal search warrant  
17                  was being executed at his residence. Darby was further  
18                  advised that he was not under arrest, that he did not have to  
19                  talk to the interviewing agents, and that he was free to  
20                  leave the residence at any time during the execution of the  
21                  search warrant.

22                  Following these advisements Darby agreed to  
23                  speak with the agents. Darby told the interviewing agents in  
24                  sum and substance that he had been accessing images of minors  
25                  engaging in sexually explicit conduct on the Dark Net

1 approximately twice a month and that he had been collecting  
2 these images for the past three to four years. He downloaded  
3 images of minors engaging in sexually explicit conduct to his  
4 computers and to his external hard drive. He stated he never  
5 distributed these images or commented on them online.

6 On or about February 2nd, 2016, a Department of  
7 Justice forensic examiner completed a forensic analysis of  
8 the electronic media seized from the defendant's residence,  
9 including an Asus laptop which contained a Samsung hard drive  
10 therein, a second Asus laptop computer with both a Samsung  
11 and HGST hard drive contained therein, and a Seagate USB  
12 external hard disc drive. Located on these electronic media  
13 were approximately 1,608 images and 298 videos of images of  
14 minors engaging in sexually explicit conduct as defined in 18  
15 United States Code Title 2256(2)(A) through (B). These  
16 images and videos contained depiction of minors being  
17 sadistically and masochistically abused.

18 The defendant's computers and external hard  
19 drive were manufactured outside the Commonwealth of Virginia.

20 The defendant's computers throughout the time  
21 period as delineated in the indictment had access to the  
22 Internet, which is an interconnected network of computers  
23 with which one communicates when online, and that this  
24 network crosses state and national borders.

25 The defendant admits and the evidence

1 substantiates that on or about October 27, 2014, in Suffolk,  
2 in the Eastern District of Virginia and elsewhere, he did  
3 knowingly receive a visual depiction using a means and  
4 facility of interstate and foreign commerce and that had been  
5 shipped and transported in and affecting interstate and  
6 foreign commerce and which contained materials which had been  
7 so shipped and transported by any means, including by  
8 computer, and the production of such visual depiction  
9 involved the use of a minor engaging in sexually explicit  
10 conduct, and such visual depiction was of such conduct, that  
11 is, Gerald Andrew Darby received a visual depiction bearing  
12 the file name [Jane Doe]+9yr+00016.jpg.jpg. This image  
13 depicts a prepubescent nude girl lying on her back on a bed  
14 with her legs spread apart. The girl's fingers are spreading  
15 apart her vagina. Her vagina and anus are the focus of the  
16 image.

17 The defendant admits that this image had been  
18 mailed and shipped and transported in interstate and foreign  
19 commerce by any means, including by a computer.

20 The events described herein occurred in the  
21 Eastern District of Virginia.

22 The defendant stipulates and agrees that his  
23 participation in the events described was undertaken  
24 knowingly, intentionally and lawfully and not as a result of  
25 an accident, mistake, or other innocent reason.

1 THE COURT: Mr. Darby, would you please stand?

2 Except for your contention that certain  
3 materials were obtained by an unlawful search and seizure and  
4 subject to that, the two references to lawful warrants in  
5 this in paragraphs 7 and 11, and except with your, which --  
6 except for that to the extent that -- subject to your  
7 claim -- let me start from the beginning, I better start --  
8 forget everything I've said up to now about this Statement of  
9 Facts.

10 In relation to the Statement of Facts, subject  
11 to your two Motions to Suppress in this case, are the facts  
12 stated in the Statement of Facts true and correct, Mr. Darby?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Mr. Marshall, would you hand to  
15 Mr. Darby this document?

16 Mr. Darby, the Statement of Facts from which  
17 Ms. Fisher read has just been handed to you.

18 Have you gone over that Statement of Facts with  
19 your attorney, Mr. Cejas?

20 THE DEFENDANT: Yes, I have, Your Honor.

21 THE COURT: And have you signed this Statement  
22 of Facts?

23 THE DEFENDANT: Yes, I have, Your Honor.

24 THE COURT: And have you initialed all the other  
25 pages?

1 THE DEFENDANT: Yes, I have, Your Honor.

2 THE COURT: And, Mr. Cejas, have you witnessed  
3 Mr. Darby signing this and have gone over these Statements of  
4 Facts with Mr. Darby?

5 MR. CEJAS: Yes, sir.

6 THE COURT: And have you signed as a witness to  
7 Mr. Darby's signatures?

8 MR. CEJAS: Yes, sir.

9 THE COURT: The Statement of Facts I find --  
10 and, Mr. Darby, are you signing the Statement of Facts freely  
11 and voluntarily, sir?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And are you signing this because the  
14 facts are true as stated in the Statement of Facts subject to  
15 your two Motions to Suppress in this case?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: It's the finding of the Court in the  
18 case of the United states versus Gerald Andrew Darby that  
19 this defendant is fully competent and capable of entering an  
20 informed plea with respect to Count One, and that his  
21 conditional plea of guilty is a knowing and voluntary plea  
22 supported by an independent basis in fact containing each of  
23 the essential elements of the offense.

24 This Court accepts the guilty plea and finds  
25 this defendant guilty as to Count One subject to the two



1 Motions to Suppress.

2 Now, a written pre-sentence report has  
3 previously been prepared in this case and consequently we  
4 will close this proceeding at this time for the guilty plea  
5 portion of it. All right?

6 We'll take a five-minute recess.

7 (Recess take 10:53 until 11:04 a.m.)

8 THE COURT: The defendant has moved to waive the  
9 pre-sentence report for immediate sentencing, and it appears  
10 that and the Court does find that the documents previously  
11 submitted as the motion as set forth and the previous  
12 pre-sentence report provide this Court with sufficient  
13 information and I so find and sufficient evidence to consider  
14 in detail the nature and circumstances of the offense, the  
15 history and characteristics of Mr. Darby, the need for the  
16 sentence imposed to reflect the seriousness of the offense  
17 and to promote respect for the law, to provide just  
18 punishment for the offense, that the pre-sentence report  
19 gives sufficient information to afford adequate deterrence to  
20 criminal conduct, and to protect the public from further  
21 crimes Mr. Darby may commit, and to provide Mr. Darby with  
22 needed educational or vocational training, medical care, or  
23 other correctional treatment in the most effective manner.

24 It also sets forth the kind of sentences  
25 available, the kinds of sentences in the sentencing range

1     that the Sentencing Guidelines said forth. The disparities  
2     of some -- we've got to avoid unwarranted sentencing  
3     disparities among defendants with similar records. All of  
4     this is sufficiently set forth in the prior pre-sentence  
5     report. Therefore, this Court finds that it has sufficient  
6     information to impose a sentence sufficient but no greater  
7     than necessary to comply with the factors set forth in Title  
8     18, Section 3553. In light of this, this Court waives any  
9     requirement for a pre-sentence report and the defendant --  
10    and this is based on the motion made by the defendant in this  
11    case, and the Court grants said motion.

12                 We'll proceed then to sentencing.

13                 Based on the waiver that the defendant has made  
14    is there anything need be done in relation to that particular  
15    motion, Ms. Yusi?

16                 MS. YUSI: No, Your Honor.

17                 THE COURT: All right. We'll proceed.

18                 Mr. Darby, if you'll come forward.

19                 Mr. Darby, this is a sentencing hearing. At  
20    this hearing you have the right to present a sworn or an  
21    unsworn statement. You have a right to have your attorney  
22    speak for you or to present any letters or writings or  
23    witnesses or any documents or any information of any kind  
24    that you think might be helpful to the Court in announcing  
25    the sentence to be imposed upon you.

1 Do you understand your rights before sentence is  
2 imposed?

3 THE DEFENDANT: Yes, I do, Your Honor.

4 THE COURT: Now, Mr. Darby, have you had an  
5 opportunity to go over the pre-sentence report in this case  
6 with your attorney, Mr. Cejas, in this case?

7 THE DEFENDANT: Yes, I have, Your Honor.

8 THE COURT: Do you feel there's anything  
9 incorrect in the pre-sentence report, Mr. Darby, other than  
10 the fact that you maintain your two Motions to Suppress?

11 THE DEFENDANT: No, I do not, Your Honor.

12 THE COURT: One problem I have is that,  
13 Mr. Cejas, you objected to the inclusion of the polygraph  
14 results in paragraph 26 which states the result of the exam  
15 were inconclusive. I have previously felt that it should  
16 remain in the pre-sentence report, but I'll give you an  
17 opportunity to argue the point again if you so desire,  
18 Mr. Cejas.

19 MR. CEJAS: No, sir, Your Honor. We're willing  
20 to accept the Court's previous ruling on that issue.

21 THE COURT: Anything you want to add, Ms. Yusi  
22 or Ms. Fisher?

23 MS. YUSI: No, Your Honor.

24 THE COURT: All right. I'm going to overrule  
25 that particular objection and it's going to be included in

1 the pre-sentence report. I've certainly gone over this  
2 matter before in relation to the sentencing calculations by  
3 the sentencing guidelines.

4 It appears the base offense level is 22 in this  
5 case. Do you agree, Mr. Cejas?

6 MR. CEJAS: Yes, sir, Your Honor.

7 THE COURT: You indicated that he pled guilty to  
8 receipt of material involving sexual exploitation of a minor,  
9 which takes two points off. The offense involved a minor who  
10 had not yet attained the age of 12. Let's go into all of the  
11 Sentencing Commission's report itself which indicates that  
12 this happens in overwhelmingly almost every single case, that  
13 there is -- the special offense characteristics, that is, an  
14 offense involved material portraying sadistic or masochistic  
15 conduct or the depiction of violence.

16 We are now in a situation in all of these cases  
17 in which a majority of cases involve this, in almost all of  
18 the cases again. The offense you're involved in, that's a  
19 plus four. The offense involved the use of a computer, and  
20 it almost gets to be a joke in relation to this because  
21 almost every single case involves a computer. I would  
22 certainly take out the sexual exploitation, I would certainly  
23 take out that it involved a minor who has not yet attained  
24 the age of 12 and I'd probably take out the offense involved  
25 the use of a computer of two points because that's

1 unquestionably in there.

2 The offense involved 600 or more images, isn't  
3 much question.

4 That he's accepted responsibility, there's no  
5 question about that and, therefore, the second point. The  
6 defendant indicates something less than that but I'll be glad  
7 to hear argument on that at this time, considering what you  
8 contend, Mr. Cejas, and then I'll hear from the government  
9 and then come back to you.

10 Mr. Darby, you can have a seat during this, if  
11 you like.

12 MR. CEJAS: Your Honor, I'll be brief. We're  
13 asking the Court to impose a sentence of 60 months followed  
14 by a term of supervised release not to exceed 15 years. I  
15 believe that's the sentence that the Court imposed  
16 previously.

17 The Court also -- I believe Your Honor filed a  
18 written opinion as to why that sentence was imposed. We  
19 certainly would cite that as grounds for support of a  
20 60-month sentence in this case.

21 We would note that the government in this  
22 instance is not objecting to a 60-month sentence. So we  
23 believe that that is -- for the reasons that the Court cited  
24 in its opinion, I forgot the document number but the --

25 THE COURT: You don't have to give it. I'm well

1       aware of it, Mr. Cejas.

2                   MR. CEJAS: I assumed so.

3                   THE COURT: So let me hear from the government  
4       and see what they say. I don't think they particularly  
5       oppose it but we'll see what Ms. Fisher has to say.

6                   All right, Ms. Fisher, be glad to hear from you.

7                   MS. FISHER: Yes, Your Honor. As far as  
8       argument, the United States stands on the previously filed  
9       sentencing memorandum and the previous oral argument made at  
10      the prior sentencing hearing.

11                  And Mr. Cejas is correct, that the government in  
12      concession for the defendant's agreement to waive his motion  
13      to compel the government agrees that a 60-month sentence is  
14      appropriate in this case.

15                  THE COURT: All right. I thank you very much.

16                  It appears to me that the Court finds that what  
17      it imposed previously was sufficient but no greater than  
18      necessary. The reasons it set forth in its written opinion  
19      it readopts and confirms in this particular case without  
20      setting them forth in detail as they've been set forth in  
21      sufficient detail. I think that a sentence -- it will impose  
22      a sentence sufficient but no greater than necessary.

23                  Mr. Darby, if you'll come forward, please.

24                  It appears that you're responsible for receiving  
25      and possessing child pornography. You possessed 1,584

1 images, and 24 images of depicting bondage.

2 You were raised in a loving and stable home that  
3 was free of abuse. Both parents worked. They coordinated  
4 their work schedules where one of them was always at home to  
5 care for the children. You were unfortunately bullied during  
6 middle and high school and therefore were somewhat immature.  
7 You did well academically and you went to college. You  
8 enlisted in the Navy. You completed the Naval Nuclear Power  
9 program and you were stationed at the Naval Medical Center in  
10 Portsmouth.

11 You've suffered from depression on and off. A  
12 lot of this concerns the immaturity and insecurity that so  
13 often accompanies individuals similar to you. There's no  
14 question that the offense is serious but there's no question  
15 that your personal history leaves a lot -- the question of  
16 the sentencing guidelines are extremely important. And to go  
17 over those again is the -- we've got to consider the  
18 seriousness of the offense, we've got to promote respect for  
19 the law and to provide just punishment for offense. We've  
20 got to afford adequate deterrence to criminal conduct and to  
21 protect the public from further crimes the defendant may  
22 commit, and to provide the defendant with needed educational  
23 or vocational training, medical care, or other correctional  
24 treatment in the most effective manner considering the kind  
25 of sentences available and the sentencing ranges as provided

1 by the Sentencing Guideline Commission.

2 I also have to consider disparity of sentences  
3 which we have set forth in some detail in the written opinion  
4 in relation to this matter. I'm very concerned concerning  
5 the lack of publicity afforded by the Internet as to the  
6 seriousness of the offenses involved. I think people are  
7 misled by virtue of the Internet.

8 The Internet itself has become the pornographic  
9 star of the world. We now know that pornography is the  
10 number one income provided by the Internet. What a mess.  
11 What a mess. I mean, when we start considering all of this  
12 we consider creating problems. The zest for the material  
13 gains that are provided, are we punishing the right people?  
14 It scares me.

15 How could anyone maintain that the Internet does  
16 not know what's going on? It bothers me greatly that the  
17 massive amounts of it provided. However, Mr. Darby  
18 participated in it, and it couldn't continue unless people  
19 like Mr. Darby would participate in it. So we've got to  
20 somehow minimize this conduct.

21 The great tragedy is the monetary reward that  
22 some parents get from publishing and producing this is  
23 unquestionably sickening. It certainly doesn't lessen what  
24 Mr. Darby has done but it does represent the fact that we may  
25 not be utilizing the best possible means to reduce the



1 victimization of children.

2 In any event, I find a sentence sufficient but  
3 no greater than necessary in this case for the reasons I've  
4 previously set forth in a written opinion which I adopt  
5 herein.

6 Pursuant to the Sentencing Reform Act of 1984 --  
7 excuse me. I didn't give you a chance to say anything,  
8 Mr. Darby. You have a right again to make a sworn or an  
9 unsworn statement, sir, if you desire. You don't have to but  
10 you can.

11 THE DEFENDANT: No, thank you, Your Honor.

12 THE COURT: Pursuant to the Sentencing Reform  
13 Act of 1984 it's the judgment of the Court that the Defendant  
14 Gerald Andrew Darby is hereby committed to the custody of the  
15 United States Bureau of Prisons to be imprisoned for a term  
16 of 60 months subject, of course, to his appeal and to his two  
17 Motions For Suppression and the determination of the same.

18 The defendant is remanded to the custody of the  
19 United States Marshal.

20 Upon release from imprisonment the defendant  
21 shall be placed on supervised release for a term of 15 years.

22 Within 72 hours of release from the custody of  
23 the Bureau of Prisons the defendant shall report in person to  
24 the probation office in the district to which the defendant  
25 is released.

1           The defendant shall refrain from any unlawful  
2     use of a controlled substance and submit to one drug test  
3     within 15 days of release on supervised release and at least  
4     two periodic drug tests thereafter as directed by the  
5     probation officer.

6           While on supervision the defendant shall not  
7     commit another federal, state or local crime, shall not  
8     unlawfully possess a controlled substance, shall not possess  
9     a firearm or destructive device. The defendant shall comply  
10    with the standard conditions that have been adopted by this  
11    Court for probation and supervised release.

12          The defendant shall comply with the following  
13    additional conditions: If the defendant tests positive for  
14    illicit substances or alcohol during his period of supervised  
15    release he shall participate in a program approved by the  
16    United States Probation Office for substance abuse, which  
17    program may include residential treatment and testing to  
18    determine whether the defendant has reverted to the use of  
19    drugs or alcohol, with partial cost to be paid by the  
20    defendant. All this may be directed by the probation  
21    officer.

22          The defendant shall abstain from alcohol during  
23    his period of supervised release.

24          The defendant shall waive all rights of  
25    confidentiality regarding substance abuse treatment in order

1 to allow the release of information to the United States  
2 Probation Office and authorized communication between the  
3 probation officer and any treatment provider.

4 The defendant shall participate in any program  
5 approved by the United States Probation Office for mental  
6 health treatment to include psychosexual evaluation and sex  
7 offender treatment. The cost of these programs are to be  
8 paid partially by the defendant as may be directed by the  
9 probation officer.

10 The defendant shall waive all rights of  
11 confidentiality regarding sex offender mental health  
12 treatment to allow the release of information to the United  
13 States Probation Office and the Bureau of Prisons and  
14 authorized communication between the probation officer, the  
15 Bureau of Prisons, and any treatment provider.

16 The defendant shall submit to polygraph testing  
17 as directed by the United States Probation Office as part of  
18 the defendant's sex offender therapeutic program. The costs  
19 of the testing are to be paid partially by the defendant all  
20 as directed by the probation officer.

21 The defendant shall submit to penile  
22 plethysmograph testing or Abel Assessment for Sexual  
23 Interest, the CC, as directed by the United States Probation  
24 Office as part of his sexual offender therapeutic treatment.  
25 The costs of this testing are to be paid partially by the

1 defendant as may be directed by the probation officer.

2 The defendant shall not utilize any sex-related  
3 adult telephone services, websites or electronic bulletin  
4 boards.

5 The defendant shall submit any records requested  
6 by the probation officer to verify compliance with this  
7 condition, including but not limited to credit card bills,  
8 telephone bills, cable and satellite television bills or any  
9 bills of any kind to access any Internet or other type of  
10 devices.

11 The defendant shall not have access to or  
12 possess any pornographic material or pictures displaying  
13 nudity or any magazines using juvenile models or pictures of  
14 juveniles.

15 The defendant shall have no contact with minors  
16 unless supervised by a competent, informed adult approved in  
17 advance by the probation officer.

18 The defendant shall not engage in employment or  
19 volunteer services that allow him access to computers or  
20 minors without the express permission in advance by the  
21 probation officer.

22 Pursuant to the Adam Walsh Child Protection and  
23 Safety Act of 2006 the defendant shall register with the  
24 state sex offender registration agency in any state where the  
25 defendant resides, works and attends school, according to

1 federal and state law as directed by the probation officer.

2 Pursuant to that Adam Walsh Child Protection and  
3 Safety Act of 2006 the defendant shall submit to a search of  
4 his person, property, house, residence, vehicle, papers,  
5 computer or other electronic communication or data storage  
6 devices or media and his effects at any time by any law  
7 enforcement or probation officer with reasonable suspicion  
8 concerning unlawful conduct or a violation of a condition of  
9 supervision upon prior notification to and approval by the  
10 Court or with a warrant.

11 The defendant shall not possess or use a  
12 computer to access any online computer services at any  
13 location, including employment, without the prior approval of  
14 the probation officer. This includes any Internet service  
15 providers, bulletin board systems or any other public or  
16 private computer network.

17 The Court has considered the defendant's net  
18 worth of \$16,918 and zero liquid assets, his lifestyle and  
19 financial needs as reflected in the pre-sentence report, his  
20 earning potential and the lack of dependents relying on his  
21 support. The Court finds that the defendant is not capable  
22 of paying a fine.

23 However, the defendant shall pay the following  
24 total penalties. As to Count One, the defendant shall pay a  
25 special assessment in the amount of \$100. There's no

1       restitution and no fine. Payment of the criminal monetary  
2       penalties shall be due in full immediately as to this special  
3       assessment. Any balance remaining unpaid on the special  
4       assessment at the inception of supervision shall be paid by  
5       the defendant in installments of not less than \$25 per month  
6       until paid in full. Said payment shall commence 60 days  
7       after the defendant's supervision begins.

8               Nothing in the Court's order shall prohibit the  
9       collection of any special assessment by the Bureau of Prisons  
10      while the defendant is incarcerated.

11             Anything further need be done in this matter,  
12      Ms. Yusi? Ms. Fisher?

13             MS. YUSI: No, Your Honor.

14             THE COURT: How about the remaining counts of  
15      the indictment?

16             MS. YUSI: They were previously dismissed, Your  
17      Honor, but we would renew our motion to dismiss the remaining  
18      counts of the indictment.

19             THE COURT: The remaining counts of the  
20      indictment are hereby dismissed if not previously dismissed  
21      to which the defendant has not pled guilty.

22             Does anything further need be done in this  
23      matter, Mr. Cejas?

24             MR. CEJAS: No, sir. Thank you, Your Honor.

25             THE COURT: Thank you, in which case we'll

1 recess till 2:30.

2 (Whereupon, the proceedings were concluded at  
3 11:32 a.m.)

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## COURT REPORTER'S CERTIFICATE

I, Emily Koppenhaver, RMR, official court reporter, certify that I recorded verbatim by stenotype the proceedings in the captioned cause before the HONORABLE ROBERT G. DOUMAR, Judge of said Court, Norfolk, Virginia, on the 21st day of March, 2017.

I further certify that to the best of my knowledge and belief, the foregoing transcript constitutes a true and correct transcript of the said proceedings.

Given under my hand this \_\_\_\_ day of May, 2017, at Norfolk, Virginia.

Emily Koppenhaver

Emily Koppenhaver, RMR

